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C O N F I D E N T I A L SECTION 01 OF 02 ABUJA 002506

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SUBJECT: NIGERIA: LOCAL SHARI'A COURT DENIES APPEAL OF
ADULTERY CONVICTION OF AMINA LAWAL

REF: ABUJA 00038

Classified by Ambassador Howard F. Jeter; Reasons 1.5 (B) and (D).

11. (C) Summary: The upper Shari'a court in Fantua, Katsina State August 19 denied the appeal of Amina Lawal, convicted of adultery and sentenced to death by stoning. Poloffs twice met Lawal's chief attorney Hauwa Ibrahim (strictly protect), once prior to the appellate decision and immediately after the appeal was denied. Ibrahim said that she presented a case grounded in both Shari'a and constitutional law. Ibrahim believed that under both Shari'a and secular law her arguments were sufficient to win acquittal, but the judge, bowing to local pressure and community sentiment, disregarded the law in order to satisfy spectators in the crowded courtroom. Ibrahim recalled the judge proclaiming in his decision that the constitution was inferior to Shari'a law. The decision was greeted by loud cheers and jubilation. Ibrahim has swiftly appealed to the Shari'a Appeals Court in Katsina. If unsuccessful there, the case next moves to the Federal Court of Appeals, then the Supreme Court. The issue of whether harsh Shari'a punishments abridge the constitutional prohibition against cruel and unusual punishment will take center stage should the case reach the federal appellate panels. End Summary.

12. (U) On August 16, Hauwa Ibrahim updated Poloffs on Amina Lawal's case. Also present were Ms. Lawal and her baby. As the first female attorney allowed to argue before a Nigerian Shari'a court, Ms. Ibrahim built a defense based on the facts of the case, constitutional law, legal procedure, and Shari'a. In her closing arguments, Ms. Hauwa Ibrahim asserted that the Nigerian constitution guaranteed Ms. Lawal the right to life. She further argued that Ms. Lawal had been denied her constitutional right to counsel, since she had no legal representation at the original trial. Her final point was that the Shari'a act as passed by the Katsina legislature, guaranteed the case be heard by a panel of three judges, but Ms. Lawal's case was heard by only one. Ibrahim also contended that Shari'a could not be applied retroactively, an argument used successfully in the Safiya Hussein appeal. (Ref. A)

13. (U) Earlier in the appeal proceedings, Ibrahim argued that Ms. Lawal's initial confession of guilt was borne of a lack of understanding of the charges of the law. There is a clear precedent that the accused is allowed to retract a confession; the court, however, refused to accept this from Ms. Lawal.

14. (U) Ms. Ibrahim believed her case was strong but feared that popular sentiment would compel the judge to deny the appeal. Realizing that local political and social imperatives might outweigh sound legal argument, Ms. Ibrahim had already prepared the appeal for the Shari'a Appeals Court. Unfortunately, Ibrahim was prescient.

15. (C) Poloffs met Ibrahim August 20, the day following the court announcement. Although she realized the chance of victory was slim at the lower court, she still felt emotionally deflated by the verdict. The next avenue of appeal is the Shari'a Appeals Court.

16. (C) The atmosphere in the courtroom for the August 19 decision was more akin to a political rally than a judicial proceeding, according to Ibrahim. The room was packed. Students of local "Koranic" schools who are nothing more than street beggars filled the room, murmuring religious quotes and deriding defense counsel. Many people appeared to have been trooped in from other localities in order to augment the hard line presence. The Shari'a judge apparently decided to play to the crowd, dismissing all arguments of the defense. The judge asked the crowd whether he should apply man's law or God's. Ibrahim lamented that this statement would not have been so bad if the judge had correctly interpreted Islamic

law. The judge dismissed out of hand the possibility that Lawal did not understand the charges against her and proclaimed her initial confession valid. He stated that Lawal's pregnancy was conclusive proof of adultery under Maliki jurisprudence. However, Ibrahim pointed out, Maliki thought accepts the "hidden embryo" theory where the pregnancy of a formerly married woman could be attributed to that union for a period of several years after the marriage has ended. He dismissed as irrelevant any argument that conception occurred before implementation of Shari'a in Katsina. Rather, the judge held that the constitution was inferior to Shari'a law. The judge also rejected defense arguments as nullities because there is no right of appeal under Shari'a. Finally, the judge commended the police who arrested Lawal. Getting a cheer from the crowd, he decreed that it was the duty of good Muslims to arrest anyone violating Shari'a law.

17. (C) Ibrahim felt the judge basically made a mockery of the law and his judgement was played to the gallery and did not address the legal points made by the defense. For instance, the judge completely sidestepped the issue of how he could disregard the constitution and Katsina's Shari'a penal code passed by the State Assembly, when he owed his office to these two laws.

18. (C) Although it has been reported that the judge ordered that the stoning be carried out after the baby is weaned--a minimum of sixteen months from now--Ibrahim stated that the Fatwa issued for the stoning was scheduled for September 20, 2003. She fears that vigilantes may attempt to implement the sentence no matter what stage the appeal is in. If the case is allowed to run its course, there is ample time for a well thought-out appeal, and time for the furor to die down. The next step of appeal for Lawal is the Shari'a Court of Appeal in Katsina. This is the same level at which Safiya Hussein was acquitted in Sokoto State.

9.(C) Ibrahim identified three major issues which should be resolved through the appeals process. They are the supremacy of the constitution as the law of the land, the conflict of law between the Shari'a penal codes, expanded Shari'a law and Shari'a as derived from Islamic texts, and Nigeria's obligations under international human right instruments to which it has acceded.

Comment

10. (C) Perhaps more than in Safiya Hussein's case, Amina Lawal's may be a litmus test for Shari'a in Nigeria. Should the case reach the federal courts it may become the Nigerian equivalent of the Scopes trial. If the case makes its way into the Federal Appeals Court the constitutionality of stringent Shari'a penalties could be tested, and conceivably declared unconstitutional.

11. (C) With each hearing in the appellate courts, the chances for a reversal of Lawal's conviction improve. Should this case move swiftly there are political ramifications, particularly in an election year. Should the case be reversed by the federal court, there will be an outcry from ardent Muslims that the Federal government is impinging on their religious freedom. Although not involved in the judicial process, Obasanjo will be blamed and condemned in much of the North. Should the case reach the Supreme Court and that apex court uphold the conviction, Obasanjo faces a Hobson's choice. If he pardons Lawal, Obasanjo will lose even more support in the Muslim North which is already against him and religious tension will likely rise. If he does not grant a pardon, Lawal will be executed, some Christians will accuse Obasanjo of bowing to electoral pressure and Nigeria's image in the international community will suffer greatly.

JETER